ESMA DP on MiFID II investor protection topics linked to digitalisation

ABBL opinion

Author: Marilyn RINCK, marilyn.rinck@abbl.lu
Date: 14 March 2024

EU Transparency register: 3505006282-58

Online disclosures

1. Do you already layer information provided to (potential) clients?

Layering information provided to (potential) clients is a common practice in the financial sector to ensure clarity and accessibility. By presenting information in a structured manner with key details upfront and more detailed information available upon request or further exploration, clients can easily grasp essential points before delving deeper.

2. Do you create bespoke content and information for existing clients based on their preferences, risk profile and/or investment objectives?

In practice, crafting customized content necessitates additional scrutiny/extra review, making it a more expensive and time-intensive process.

Tailoring bespoke content to specific client relationships is a strategic approach that enhances client engagement and satisfaction. By personalizing content and information for established clients according to their preferences, risk tolerance, and investment goals, firms can bolster relationships, enhance communication, and empower clients to make well-informed decisions that align with their unique objectives.

3. What type of information would you deem vital to show in the first layer of information to investors with regard to the different instruments you offer?

Vital information to show in the first layer of information to investors regarding the different instruments offered should include:

- key features of a product
- risks indicators and potential returns
- costs indication
- any other critical details that can help investors understand the nature of the investment and make initial assessments.
- Clear and concise summaries, overview or dashboards can aid in capturing attention and guiding further exploration.

4. What type of information do you observe your clients treat as the most important? (if known)

Understanding what information clients treat as most important can vary depending on individual preferences, investment goals, and risk tolerance.

Conducting surveys, feedback sessions, or analysing client behaviour can provide insights into which aspects of information clients prioritize, whether it be performance data, risk disclosures, fees, or other factors influencing their decision-making process.

5. Which information on costs and charges 'belongs in the first layer'?

Information on costs and charges that 'belongs in the first layer' should encompass clear details on fees, expenses, commissions, and any other charges associated with the investment products or services offered.

Transparent disclosure of costs upfront is crucial for investors to assess the total cost of ownership and make informed decisions regarding their investments. This transparency fosters trust and helps clients understand the financial implications of their choices from the outset.

6. Do you provide interactive or other graphic representations of information on financial instruments or investment services to your clients? Do clients perceive them as useful aids?

Providing interactive or graphic representations of information on financial instruments or investment services can enhance client understanding and engagement.

Clients often find these tools useful as they can simplify complex concepts, improve retention, and facilitate decision-making.

7. Should the vital information need to be the same for all MiFID financial instruments, or can it be different depending on the type of instrument? If so, how?

While the vital information should be consistent across all MiFID financial instruments to ensure transparency and comparability, there may be room for customization based on the specific characteristics of each instrument.

Tailoring information to suit the complexity and risk profile of different instruments can help clients make informed decisions more effectively.

8. Do you already provide visual aids (support) to (potential) clients in order to help them better understand complex financial concepts, for example the use of a glossary? If you do, please mention which and explain.

Visual aids can be valuable tools in helping clients comprehend intricate financial concepts. By offering definitions and explanations in a clear and visual format, clients can better grasp terminology and navigate complex information. Using visual aids like charts, graphs, and infographics can also enhance comprehension.

9. How do you measure the effectiveness of the online disclosures you provide to clients? Do you identify problems clients encounter with language or structure of your disclosures? What are the most common issues identified?

Measuring the effectiveness of online disclosures involves tracking client engagement, feedback, and comprehension levels. Conducting surveys, analysing website analytics, and monitoring client inquiries can help identify any issues with language or structure in disclosures. Common problems may include jargon-heavy content, lack of clarity, or insufficient context provided.

10. What is your positive and negative experience with layering information?

Layering information can have both positive and negative aspects.

On the positive side, layering allows for presenting information in a structured manner, catering to different levels of detail desired by clients.

However, excessive layering may lead to information overload or confusion if not organised effectively. Striking a balance between depth of information and ease of navigation is crucial for a successful online disclosure strategy.

Marketing communications

11. Do you currently have an overall register of marketing practices used? If you do, are there practices you follow-up on more frequently and if so, how do you decide which practices you follow-up on?

Companies maintain a comprehensive register of marketing practices used. The decision on which practices to follow up on more frequently can be based on various factors such as the risk associated with the product or service being marketed, compliance requirements, and historical performance data.

12. How do you ensure that marketing communications only reach the intended target market (especially in the case of higher risk/higher complexity products)?

To ensure marketing communications reach the intended target market, companies can utilize targeted advertising strategies, conduct market research to understand their audience better, and implement robust compliance checks to align with regulations governing the marketing of high-risk or complex products.

13. How do you monitor the effectiveness of your marketing practices? For example, do you use targets such as clicks, views and/or number of complaints or how many new clients are part of the appropriate target market? Or do you test their effectiveness through consumer testing?

Monitoring marketing effectiveness can involve tracking metrics with a combination of clicks, views, number of complaints, and assessing new client acquisition within the target market. Additionally, consumer testing can be employed to evaluate the impact and reception of marketing campaigns. It is worth noting that firms report client complaints, including on firm marketing practices, to national competent authorities.

14. Do you review your marketing practices if complex and risky products are seemingly marketed outside the determined target market for these products?

It is essential to review marketing practices if complex or risky products appear to be marketed outside the intended target market. Regular reviews can help identify any deviations from the target market and allow for corrective actions to be taken to ensure compliance and alignment with business objectives and client product adequacy.

15. Do you have in place controls dedicated to marketing practices targeted to vulnerable persons to ensure those practices are adequate? If so, please explain.

Companies should have controls in place for marketing practices targeting vulnerable individuals to ensure adequacy and ethical standards.

These controls may include enhanced scrutiny of messaging, tailored communication approaches, and adherence to specific guidelines aimed at protecting vulnerable consumers.

Digital Engagement Practices (including gamification)

27. Do you have a system in place to avoid clients from trading excessively, if so what kind? For example, do you contact or even (automatically) warn users when they trade on a very frequent basis?
28. Do you incentivise your clients to log-in on a daily basis? For instance, by pop-up messages, frequent email updates etc.?
29. Do you use gamification techniques for client engagement? If so, what type of gamification techniques do you use and for what purpose (training, educational content, subscription process, other – if so, please explain)?
30. If you do not use above mentioned incentives and gamification techniques, have you observed problems or difficulties with any of them?

General comment on that section:

Incorporating gamification into digital engagement practices requires a thoughtful approach that balances the benefits with potential drawbacks. It is important to avoid manipulation with an emphasis on rewards over actual learning and educational element of the gamification experience.

Programmers and organisations should carefully assess the suitability of gamification for their specific objectives and audience to ensure its effectiveness in enhancing engagement and learning outcomes.

Choice architecture and nudging

31. If you use nudges, please provide information on the process implemented to determine, validate and control these nudges.
32. Do you review the design of the choice architecture of your interface? If so: How often do you review it? What are the reasons to review it? Who is involved in such review?
33. What would be reasons for you to change the design of the choice architecture of your interface?
34. Do clients give feedback on the design of the choice architecture? If so, what kind of feedback do you receive and how do you follow up?
35. Do you observe increased trading activity induced by the use of the choice architecture?

General comment on that section

Nudges in financial markets are like gentle pushes that influence trading activity by adjusting how investment choices are shown to investors.

Online platforms use nudge theory to shape behaviors, aiming to steer individuals towards desired outcomes through choice architecture. These nudges work by tapping into subconscious triggers like framing or reframing a concept to make it more appealing, loss aversion, and reciprocity to make certain behaviors easier than others, potentially affecting trading activity and investment decisions.

While nudges can help guide investors towards better choices, it raised concerns about their potential misuse for aggressive sales-driven purposes that may not always align with investors' best interests.

It's vital to carefully consider the ethical implications and effectiveness of nudges in financial markets to ensure they truly benefit investors and encourage informed decision-making.

Transparency plays a crucial role in using nudges effectively; clearly explaining the intentions behind a nudge builds trust and ensures individuals grasp why behavioral interventions are being made.

Nudges should steer clear of manipulative purposes, especially when there are financial or social gains at stake, focusing instead on helping individuals without taking advantage of them.

Open question

40. Do you have any (other) observations with regard to the topics covered under this discussion paper that you would like to share with ESMA

The implementation of online disclosures in the financial sector is associated with various challenges that should neither be underestimated nor overlooked.

1. Cybersecurity and Privacy Concerns:

The digital age introduces increased cybersecurity threats and risks to critical financial data. Protecting sensitive information from cyberattacks is crucial to maintain trust and integrity in the financial system. In the same vein, safeguards should be introduced to ensure compliance with the protection of personal data, notably by abiding to the rules set-up in the General Data Protection Regulation (EU 2016/679) ("GDPR").

2. Managing Large Volumes of Financial Data & System Integration

The vast amount of financial data generated poses challenges in managing, storing, and integrating this data effectively. One component seems often to be underestimated, new data is easily storable in new systems, but the biggest difficulty is to make new data types and fields coexist with legacy systems.

Integrating new disclosure management solutions with existing legacy systems can be complex and costly. Upgrading or replacing legacy systems to align with modern digital solutions requires careful planning to minimize disruptions as they often contain outdated data, making integration with new digital solutions difficult.

3. Data Security and Compliance:

Financial institutions must sometimes navigate conflicting legal and regulatory rules regarding personal data protection and anti-money laundering/combating terrorism financing (AML/CTF). Balancing transparency for AML/CTF purposes while protecting personal financial information under national privacy laws and at the level of the European Union with the GDPR presents a unique challenge for financial institutions. One must indeed ensure that both principles be complementary while being duly complied with.

4. Constant Evoluation of Compliance and Regulation:

Keeping up with evolving regulatory requirements, especially concerning non-financial disclosures like sustainability and ESG mandates, requires significant investment in time and effort to ensure compliance.

5. Empowering Stakeholders for financial success

Stakeholders may lack the skills needed to access and interpret financial information in a digital format, particularly if not presented in a user-friendly manner.

It is therefore necessary to provide training and support to stakeholders to enhance their financial literacy and proficiency in navigating digital financial information effectively. This can involve offering workshops, resources, and tools tailored to their needs, as well as ensuring that financial data is presented in a clear, intuitive, and user-friendly format to facilitate better understanding and decision-making.